THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 31848 OF 1997

Date: 21.06.2007

Between:

K. Pardhasaradhi.

... Petitioner.

And

A.P. State Electricity Board rep., by Member Secretary, Vidyut Soudha, Somajiguda, Hyderabad-82 and another.

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Respondents.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 31848 OF 1997

ORDER:

The petitioner seeks a direction to declare B.P.Ms. No. 39 dated 19.05.1997 issued by the first respondent in so far as it affected his chances of promotion as arbitrary and illegal and to fill up the vacancy in the category of Junior Accounts Officer, which arose on 29.04.1997, taking into consideration the qualifications and eligibility of the petitioner as on that date ignoring the exemption granted to other UDCs pursuant to B.P.Ms. No. 39 dated 19.05.1997.

Facts, in brief, are that the petitioner joined as a Lower Division Clerk on 17.09.1970. He was promoted as an Upper Division Clerk on 16.12.1987 and thereafter appointed to the Special grade post of Upper Division Clerk vide memo dated 08.01.1997. According to the petitioner, the second respondent issued memo dated 18.12.1995 directing several U.D. Clerks including the petitioner to produce, if available, valid certificates in proof of their having passed certain tests and of possessing a bachelor degree in commerce. Petitioner would contend that he was fully qualified for promotion even by 26.02.1995 and would have been promoted if there had been sufficient number of vacancies to promote all the qualified candidates, that the second respondent issued another memo in March 1997 to which the petitioner submitted proof of his possessing all the requisite qualifications, and without taking proper action thereupon the second respondent again issued memo dated 26.04.1997 directing the candidates listed in the Annexure to produce attested copies of certificates in proof of their having pass the departmental tests (a

pre-requisite for promotion to the post of Junior Accounts Officer). According to the petitioner he was the only candidate then eligible for promotion to the post of Junior Accounts Officer. Petitioner would contend that the second respondent had given 15 days time from 26.04.1997 to furnish the information sought for only to favour a chosen few knowing fully well that steps had already been initiated for G.O.Ms. No. 165 dated 22.04.1997, which conferred exemption on candidates who had crossed 45 years of age, to be adopted by the respondent board. Petitioner would submit that B.P.Ms. No. 39 dated 19.05.1997 was issued exempting candidates, who crossed 45 years of age from possessing one or the other requisite qualifications and that the respondent had deliberately chosen not to fill up the vacancies which arose prior to B.P.Ms. No. 39 dated 19.05.1997 only with a view to deny the petitioner the benefit of promotion to the post of Junior Accounts Officer.

In their counter-affidavit Respondents would state that in order to fill up one vacancy in the post of Junior Accounts Officer, which arose on 29.04.1997, the second respondent had issued memo dated 26.04.1997 calling for information regarding acquisition of the qualifications prescribed, that in the meanwhile the Government had issued G.O.Ms. No. 165 dated 22.04.1997 exempting employees who had crossed 45 years from passing the departmental tests and that the respondent board, in its proceedings in B.P.Ms. No. 39 dated 19.05.1997, had adopted G.O.Ms. No. 165 dated 22.04.1997 subject to the condition that the concession of the said G.O. was not applicable to those

employees who were enjoying exemption in academic qualifications as per the existing policy. While denying the petitioner's allegations that timely action was not taken to promote him as a Junior Accounts Officer, respondents would state that the turn of the petitioner did not come up for promotion as J.A.O. subsequent to his passing the requisite test and therefore his case was not considered. It is reiterated that it is only with a view to fill up the vacancy which arose on 29.04.1997 that information was called for on 26.04.1997.

It is well settled that no employee has any right to have a vacancy in a higher post filled as soon as the vacancy occurs. The employer has the right to keep the vacancy unfilled as long as he chooses. (**Union of India Vs. Majji Jangamayya**[1]).

It is not as if the vacancy which arose in the post of Junior Accounts Officer was kept pending for an inordinate length of time. As is clear from the counter-affidavit, the vacancy in the post of Junior Accounts Officer arose only on 29.04.1997 and less than the month thereafter B.P.Ms. No. 39 dated 19.05.1997 was issued exempting candidates, who crossed 45 years of age, from passing the departmental test prescribed as qualification for promotion. The grievance of the petitioner is that if the vacancy had been filled up before B.P.Ms. No. 39 dated 19.05.1997 was issued then he, being the sole eligible candidate, would have been promoted as a Junior Accounts Officer. It is not in dispute that as a result of the exemption granted by B.P.Ms. No. 39 dated 19.05.1997 U.D.Cs senior to the petitioner also became eligible to be considered for promotion to the post of Junior Accounts

Officer. As noted above, the mere fact that a vacancy existed in the post of Junior Accounts Officer did not by itself confer any right on the petitioner to claim that the said vacancy should be filled up, more so when the post was not kept vacant for an inordinate length of time. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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Date: 21.06.2007 RAMESH RANGANATHAN, J

MRKR

[1] AIR 1977 SC 757